

**ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE**

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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

In the Matter of:

) No. R-13-0004

)

) **COMMENT OF ARIZONA**

Petition to Amend Rule 15.8, Arizona

) **ATTORNEYS FOR CRIMINAL**

Rules of Criminal Procedure

) **JUSTICE REGARDING PETITION**

) **TO AMEND RULE 15.8, ARIZONA**

) **RULES OF CRIMINAL**

) **PROCEDURE**

)

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Pursuant to Rule 28 of the Arizona Rules of Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment to the above-referenced petition. AACJ is a not-for-profit membership organization representing four hundred criminal defense lawyers licensed to practice in the State of Arizona, as well as law students and other associated professionals, who are dedicated to protecting the rights of the accused in the courts and in the legislature. AACJ is the Arizona state affiliate of National Association for Criminal Defense Lawyers.

AACJ supports the amended rule adopted by this Court on November 14, 2013, that went into effect on January 1, 2014. Since the creation of Rule 15.8 eleven years ago, the practice of plea bargaining in Arizona has improved significantly because the parties to criminal litigation are encouraged to engage in negotiation early in the process in an open and fair manner. Our disclosure rules have consistently required the prosecution to produce all information it has that it intends to use against the criminally accused at trial, and Rule 15.8 puts some teeth into the disclosure requirements by imposing alternative sanctions on the prosecution when it fails to comply with the rules: either reinstate the plea offer that would have been accepted had the material disclosure been made in a timely manner, or suffer preclusion of the evidence at trial.

Contrary to the comments offered by prosecuting agencies, this rule is rarely invoked. In most cases, line prosecutors do as they are required and disclose all evidence obtained as part of the investigation. Usually prosecutors avoid the concern about whether documentary evidence is subject to disclosure by simply disclosing everything except their work product. The petition to modify Rule 15.8 was spurred by this Court's opinion in *Rivera-Longoria v. Slayton*, 228 Ariz. 156, 264 P.3d 866 (2011), in which the "plea deadline" provision of the rule was interpreted. The petition seeks to give meaning to the spirit of the rule by removing the limitation placed by *Rivera-Longoria* and specifying that the rule applies to all

cases in which a plea offer is made and withdrawn without regard for whether a specific “plea deadline” date is set.

The comment filed by the Solicitor General on May 16, 2014, reflects the error on the part of the prosecutorial bar in interpreting Arizona’s disclosure rules: “Disclosure unquestionably facilitates the plea process by enabling a defendant to assess the strength of the State’s case at the time it extends the offer. But that is a collateral effect of disclosure, not its purpose.” The very existence of Rule 15.8 defeats the Solicitor General’s claim. The Solicitor General’s comment, as those of the prosecuting agencies it endorses, denies the efficacy of Rule 15.8 based on bald claims that lack evidentiary support. (The Pima County Attorney cited a single case, but failed to note that the defendant in that case was convicted and his conviction was upheld.) The prosecuting agencies that have commented on this rule, including the recent comment of the Solicitor General, all assume that trial judges will have no choice but to preclude evidence that is disclosed after the plea offer expires or is withdrawn; but that was never the case, and the amended rule that went into effect on January 1, 2014, makes that abundantly clear. Filing a motion that seeks the application of Rule 15.8 is not the same as having the motion granted.

AACJ acknowledges the concession made by Arizona Prosecuting Attorneys Advisory Council (APAAC) in its comment of May 19, 2014, that these arguments

for repeal of Rule 15.8 “are no longer persuasive.” Now, instead of urging this Court to repeal the rule, APAAC agrees with the language of the amended rule because of the clarity it provides with regard to the scope of the application of the rule. AACJ agrees with APAAC; the amended rule will be less likely to result in gamesmanship by prosecutors as well as defendants.

AACJ endorses the comment of the State Bar of Arizona filed on May 9, 2014, and urges this Court to adopt its two suggested changes to the amended rule. These two minor changes will further clarify the meaning of the rule and leave less room for questions that may arise later, as was the case in *Rivera-Longoria*.

For these reasons, AACJ respectfully requests this Court adopt the amended rule and adopt the changes suggested by the State Bar of Arizona.

DATED: May 20, 2014.

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

By /s/  
David J. Euchner

This comment e-filed this date with:

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